

KEEGAN, WERLIN & PABIAN, LLP

ATTORNEYS AT LAW
265 FRANKLIN STREET
BOSTON, MASSACHUSETTS 02110-3113

(617) 951-1400

TELECOPIERS:
(617) 951-1354
(617) 951-0586

October 29, 2004

Mary L. Cottrell, Secretary
Department of Telecommunication and Energy
One South Station, 2nd Floor
Boston, MA 02202

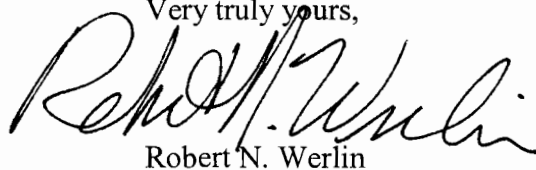
Re: D.T.E. 04-61 — Petition of Boston Edison Company and Commonwealth Electric Company for Approvals Relating to the Termination of Power Purchase Agreements with MASSPOWER

Dear Secretary Cottrell:

Enclosed for filing is the Initial Brief of Boston Edison Company and Commonwealth Electric Company d/b/a NSTAR Electric in the above-referenced proceeding. Also enclosed is a certificate of service.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert N. Werlin", is written over the typed name.

Robert N. Werlin

Enclosures

cc: Joan Foster Evans, Hearing Officer
Service List

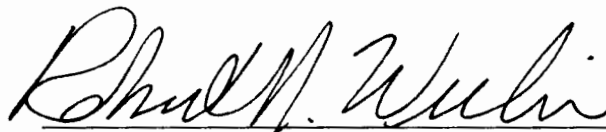
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company

)
)
)
D.T.E. 04-61

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document upon the Department of Telecommunications and parties of record in accordance with the requirements of 220 C.M.R. 1.05 (Department's Rules of Practice and Procedures).



Robert N. Werlin, Esq.
Keegan, Werlin & Pabian, LLP
265 Franklin Street
Boston, Massachusetts 02110
(617) 951-1400

Dated: October 29, 2004

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Boston Edison Company and
Commonwealth Electric Company
For Approvals Relating to the Renegotiation
Of Purchase Power Agreements with
MASSPOWER

)
)
)
)
)
)
)

D.T.E. 04-61

**INITIAL BRIEF OF BOSTON EDISON COMPANY AND
COMMONWEALTH ELECTRIC COMPANY**

Submitted by:

Robert N. Werlin, Esq.
John K. Habib, Esq.
Stephen H. August, Esq.
Keegan, Werlin & Pabian, LLP
265 Franklin Street
Boston, Massachusetts 02110

October 29, 2004

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. DESCRIPTION OF THE TRANSACTION	4
III. STANDARD OF REVIEW	5
IV. THE AUCTION AND THE MASSPOWER TERMINATION AGREEMENT ARE CONSISTENT WITH THE ACT AND THE COMPANIES’ APPROVED RESTRUCTURING PLAN AND SETTLEMENT.	7
A. The MASSPOWER Termination Agreement Is the Result of an Open and Competitive Auction and Is Consistent with the Act’s Requirement To Maximize Mitigation of Transition Costs.	7
B. The Companies Have Demonstrated That, Even Under the Most Conservative Assumptions, the MASSPOWER Termination Agreement Will Produce Savings for Customers and Therefore Is Consistent with the Companies’ Obligation to Mitigate Transition Costs to the Maximum Extent Possible.....	11
C. The Companies’ Proposed Ratemaking Treatment for the Costs of the Purchase and Sale Agreement Is Consistent With Department Precedent... 	13
V. CONCLUSION	15

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company)	
Commonwealth Electric Company)	D.T.E. 04-61

**INITIAL BRIEF OF BOSTON EDISON COMPANY AND
COMMONWEALTH ELECTRIC COMPANY**

I. INTRODUCTION

On July 7, 2004, Boston Edison Company (“Boston Edison”) and Commonwealth Electric Company (“Commonwealth”), d/b/a NSTAR Electric (“NSTAR Electric” or the “Companies”) petitioned the Department of Telecommunications and Energy (the “Department”), pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94 and 94A for approval of: (a) the MASSPOWER Termination Agreement, dated June 8, 2004, between NSTAR Electric and MASSPOWER to effect the buyout and termination of Boston Edison’s and Commonwealth’s respective existing Power Purchase Agreements (“PPAs”) with MASSPOWER,¹ and (2) ratemaking treatment associated with the MASSPOWER Termination Agreement (the “Petition”). In a related case, D.T.E. 04-70, the Companies are seeking that the buyout payment be financed and securitized through the issuance of rate reduction bonds pursuant to G.L. c. 164, § 1H. The MASSPOWER Termination Agreement is expressly conditioned on the approval of a financing order by the

¹ Boston Edison and Commonwealth collectively have three PPAs to purchase power from the MASSPOWER generating facility: (1) the Boston Edison/MASSPOWER PPA (Exh. NSTAR-2, at 1-82); (2) the Commonwealth/MASSPOWER 1 PPA (“MASSPOWER 1”) (Exh. NSTAR-2, at 83-116 and (3) the Commonwealth/MASSPOWER 2 PPA (“MASSPOWER 2”) (Exh. NSTAR-2, at 117-149 (collectively, the “MASSPOWER PPAs”).

Department that would authorize the issuance of the rate reduction bonds (Exh. NSTAR-1, Appendix A, ¶ 2.1(b)).²

The Companies' initial filing included the Petition and: (1) the pre-filed testimony of Geoffrey O. Lubbock (Exh. NSTAR-GOL); (2) the pre-filed testimony of Robert B. Hevert (Exh. NSTAR-RBH); and (3) supporting exhibits thereto.³ The MASSPOWER Termination Agreement is an appendix to the Companies' Petition, which is included in the record as Exhibit NSTAR-1.

On July 16, 2004, the Office of the Attorney General (the "Attorney General") filed a notice of intervention. Petitions to Intervene were also filed by MASSPOWER, the Massachusetts Municipal Wholesale Electric Company ("MMWEC") and Cape Light Compact ("Cape Light"). On September 8, 2004, a public hearing was held followed by a procedural conference during which the Hearing Officer granted the Attorney General's and MASSPOWER's petition to intervene. On September 13, 2004, MMWEC filed an amended petition for limited participant status, which was approved by the Department in a Hearing Officer Ruling on September 30, 2004. Limited Participant Status was also granted to Cape Light. The Department held an evidentiary hearing in this proceeding on October 20, 2004. The evidentiary record in this case includes 90 exhibits, the transcript

² The analysis of customer savings for the MASSPOWER Termination Agreement is based on the projected payments to be made to repay the rate reduction bonds (Exh. NSTAR-GOL at 15-26).

³ The Companies' supporting exhibits included: (1) Exhibit NSTAR-GOL-1 and Exhibit NSTAR-GOL-2; (2) Exhibit NSTAR-BEC-GOL-1 through Exhibit NSTAR-BEC-GOL-4; (3) Exhibit NSTAR-COM-GOL-1 through Exhibit NSTAR-GOL-COM-4; (4) Exhibit NSTAR-RBH-1 through Exhibit NSTAR-RBH-6; and (5) Exhibit NSTAR-1. Exhibit NSTAR-1, Appendix A **CONFIDENTIAL**, Exhibit NSTAR-GOL-2 **CONFIDENTIAL**, Exhibit NSTAR-BEC-GOL-3 **CONFIDENTIAL**, Exhibit NSTAR-BEC-GOL-4 **CONFIDENTIAL**, Exhibit NSTAR-COM-GOL-3 **CONFIDENTIAL**, Exhibit NSTAR-COM-GOL-4 **CONFIDENTIAL**, Exhibit NSTAR-RBH-5 **CONFIDENTIAL** and NSTAR-RBH-6 **CONFIDENTIAL** contain confidential information that is the subject of a Motion for Protective Order.

of the evidentiary hearing held on October 20, 2004 and the responses to eight record requests.

In support of the Petition, the Companies presented the testimony of Geoffrey O. Lubbock, Vice President, Financial Strategic Planning & Policy for NSTAR Electric & Gas Corporation. Mr. Lubbock provided information regarding the MASSPOWER Termination Agreement and related customer savings, including the positive effect of the MASSPOWER Termination Agreement on each of the Companies' Transition Charge. In addition, the Companies presented the testimony of Robert B. Hevert, President of Concentric Energy Advisors, Inc., ("CEA"), to discuss the specifics of NSTAR's 2003 PPA Auction (the "2003 Auction") that resulted in the execution of the MASSPOWER Termination Agreement. As set forth herein, the MASSPOWER Termination Agreement was arrived at after an open, competitive and vibrant auction, consistent with Department precedent. As a result, the MASSPOWER Termination Agreement and associated securitization will result in savings of approximately \$108 million on a net-present-value ("NPV") basis for the Companies' customers (Exh. DTE-1-13(Supp), Att. DTE-1-13(b); Exh. DTE-1-13(Supp), Att. DTE-1-13(e); Tr. 1, at 142).

The evidence provided by the Companies in this proceeding (together with the record in Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-60 (2004) ("Pittsfield") and Boston Edison Company, D.T.E. 04-68 (2004),⁴ was subject to extensive discovery and cross examination. Pittsfield at 25. The

⁴ The records in D.T.E. 04-60 and D.T.E. 04-68 were incorporated by reference into the evidentiary record in this case (Tr. 1, at 14, 32), pursuant to 220 C.M.R. § 1.10(3).

Companies provided electronic versions of documents that allowed for thorough examination by all parties of underlying formulas and calculations. Id. Based on the evidence presented, the Companies have demonstrated that they have met the standards established in the Electric Restructuring Act, Chapter 164 of the Acts of 1997 (the “Act”), regarding the mitigation of transition costs (including the buyout of PPAs), and that the 2003 Auction is consistent with: (1) Boston Edison’s restructuring settlement (the “Restructuring Settlement”), as approved by the Department in Boston Edison Company, D.P.U./D.T.E. 96-23 (1998); (2) the Commonwealth Restructuring Plan, as approved by the Department in Cambridge Electric Light Company/Commonwealth Electric Company, D.P.U./D.T.E. 97-111 (1998); and (3) Department precedent. Accordingly, the Companies respectfully request the Department approve the Petition.

II. DESCRIPTION OF THE TRANSACTION

As a result of the 2003 Auction, the MASSPOWER Termination Agreement was executed on June 8, 2004 (Exhibit NSTAR-1, at Appendix A **CONFIDENTIAL**). The Companies have three PPAs to purchase power from the MASSPOWER generating facility located in Indian Orchard, Massachusetts (Exh. NSTAR-GOL at 11). The MASSPOWER Termination Agreement will permanently extinguish all obligations for Boston Edison and Commonwealth to purchase power under the PPAs in return for a termination payment from the Companies to MASSPOWER (Exh. NSTAR-GOL at 12).⁵

⁵ As indicated above, a condition of the MASSPOWER Termination Agreement is that the Companies receive approval from the Department to issue rate reduction bonds to securitize the termination payment.

The Indian Orchard unit is a gas-fired cogeneration facilities each consist of two gas turbines and one steam turbine with a combined summer capacity rating of 231 megawatts (“MWs”) and a winter capacity rating of 270 MW (Exh. NSTAR-GOL at 11). Boston Edison has a 44.3 percent entitlement in the output of the MASSPOWER facility, which is capped at 117 MW in the winter and 100 MW in the summer (id.). The term of the Boston Edison/MASSPOWER PPA runs through December 31, 2013 (id.). The pricing provisions of the Boston Edison/MASSPOWER PPA for energy and capacity are based on predetermined fixed monthly prices indexed to fuel costs, the Gross National Product (“GNP”) and MASSPOWER facility performance (id. at 11-12).

Each of the MASSPOWER 1 and MASSPOWER 2 PPAs with Commonwealth, provides for a 11.11 percent entitlement in the output of the MASSPOWER facility, or 29.67 MW in the winter and 25.45 MW in the summer for each PPA (Exh. NSTAR-GOL at 12). The pricing provisions of the PPAs for energy are based on a formula that includes variable elements for fuel charges and pipeline commodity rates (id.). Capacity is priced at a predetermined level, based on monthly operating, transmission wheeling and investment costs, all escalating by either the GNP or a predetermined percentage increase, and pipeline demand costs (id.). The term of the MASSPOWER 1 PPA runs through July 31, 2008 and the term of the MASSPOWER 2 PPA runs through July 31, 2013 (id. at 12).

III. STANDARD OF REVIEW

General Laws c. 164, § 1G allows electric companies to renegotiate above-market power purchase contracts to achieve the maximum mitigation of transition costs. G.L. c. 164, § 1G(d)(1) and (2). The Act provides further that if a contract renegotiation, buy-

out or buy-down is likely to achieve savings to customers and is otherwise in the public interest, the Department is authorized to approve the recovery of the costs associated with the contract restructuring. G.L. c. 164, § 1G(b)(1)(iv).

In reviewing power contract buyouts, buydowns and renegotiations, the Department has applied a standard of reasonableness. Pittsfield at 6 (2004); Canal Electric Company/Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 02-34, at 21 (2002); Cambridge Electric Light Company, D.T.E. 01-94, at 7 (2002); Commonwealth Electric Company, D.T.E. 99-69, at 7 (1999); Boston Edison Company, D.T.E. 99-16, at 5-6 (1999); Western Massachusetts Electric Company, D.T.E. 99-56, at 7-8 (1999).

In assessing the reasonableness of a power-purchase contract renegotiation, buy-out or buy-down, the Department reviews available information to ensure that the agreement is consistent with the public interest. Pittsfield at 6; Western Massachusetts Electric Company, D.T.E. 99-101, at 5-6 (2000); Commonwealth Electric Company, D.P.U. 91-200, at 5 (1993); Boston Edison Company, D.P.U. 92-183 (1992).

In determining whether a contract amendment or termination is consistent with the public interest, the Department considers whether the termination is consistent with an electric company's approved restructuring plan. Pittsfield at 6-7. In Boston Edison Company, D.P.U./D.T.E. 96-23, at 46-47 (1998), the Department found that Boston Edison's Restructuring Settlement, which requires the Companies to endeavor to sell, assign or otherwise dispose of its purchase-power contracts, was consistent or substantially complied with the Act. The MASSPOWER Termination Agreement requires that the Companies receive a final order from the Department approving the

MASSPOWER Termination Agreement in accordance with the terms of the MASSPOWER Termination Agreement and approving the full recovery of payments made by Boston Edison and Commonwealth to MASSPOWER through the Transition Charge.

IV. THE AUCTION AND THE MASSPOWER TERMINATION AGREEMENT ARE CONSISTENT WITH THE ACT AND THE COMPANIES' APPROVED RESTRUCTURING PLAN AND SETTLEMENT.

A. The MASSPOWER Termination Agreement Is the Result of an Open and Competitive Auction and Is Consistent with the Act's Requirement To Maximize Mitigation of Transition Costs.

As described in Mr. Hevert's testimony, the 2003 Auction was open, competitive and maximized the mitigation of the Companies' transition costs relating to the MASSPOWER PPAs. NSTAR Electric began developing the 2003 Auction in July, 2003 (Exh. NSTAR-RBH at 5). NSTAR Electric retained CEA (after a competitive bid process (see Exh. AG-1-3 [D.T.E. 04-60], Att. AG-1-3(b); Exh. AG-3-2 **CONFIDENTIAL**)) to assist in developing the 2003 Auction. NSTAR Electric and CEA sought to design an auction that was equitable and structured to maximize the mitigation of transition costs associated with the entitlements under the Companies' PPAs (as well as those of Cambridge Electric Light Company) (the "PPA Entitlements") (Exh. NSTAR-RBH at 6). As described by Mr. Hevert, the objective was to implement a process that ensured complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate (id. at 6-7). The primary objectives of the divestiture process included:

- Minimizing the above-market costs associated with the PPAs;
- Developing, implementing and maintaining the most competitive auction process possible;

- Ensuring fair treatment of all bidders;
- Ensuring that the auction process was timely, efficient, and unbiased (id. at 7).

Initially, CEA undertook an aggressive preliminary marketing campaign during which interest in the PPA Entitlements was developed and solicited from numerous potential bidders (id. at 9-10). The initial marketing phase began on October 1, 2003 when NSTAR Electric publicly announced its intention to sell or transfer the 24 PPA Entitlements (id. at 10). Following that announcement, an Early Interest Package was sent to approximately 90 potential bidders including the counterparties to the PPAs,⁶ global, national and regional energy companies, unregulated affiliates of electric and gas utility companies, project developers, energy marketers, financial advisors and investment firms (id.).

The Early Interest Package included an Early Interest Letter (“EIL”), a Confidentiality Agreement, and a Request for Qualifications (“RFQ”) (id.; see also Exh. NSTAR-RBH-3). The EIL provided a brief description of the PPA Entitlements, a general overview of the regional market, and contact instructions for interested parties seeking additional information regarding the Contracts or wishing to participate in the bidding process (Exh. NSTAR-RBH at 10). The EIL also encouraged interested parties to consider bidding on any or all of the PPA Entitlements (id.).

The broad distribution of the Early Interest Package and the direct marketing efforts undertaken by CEA were intended to maximize the likelihood of participation by

⁶ A counterparty is the entity with which NSTAR Electric has a PPA. Generally, the counterparty is the owner of the generation facility (Tr. 1, at 128 [D.T.E. 04-60]).

the largest and most competitive group of qualified bidders (id. at 10-11). In order to further this objective, bidders were required to execute a Confidentiality Agreement as a condition of receiving any further information regarding the PPA Entitlements and to submit a completed Qualifications Package in order to be considered “Qualified Bidders” (id. at 11-13). By November 15, 2003, the issuance of the EIL resulted in 25 parties signing Confidentiality Agreements and submitting complete qualifications packages (id. at 11).

Of these 25 parties, 22 participated in the Due Diligence Stage of the auction, whereby these participants received an Offering Memorandum and a documentation CD-ROM that included all of the Companies’ PPAs and associated invoices (id. at 14). Bidders had the opportunity throughout the Due Diligence Stage to submit questions to CEA and the Companies regarding the PPAs. Bidders were also given the option to bid on the PPAs pursuant to two alternatives, i.e., either via a lump-sum payment or through the payment of energy-only pricing (id. at 16).

By December 3, 2003, the Companies had received twelve bids, including two bids for the entire PPA portfolio, and one bid for all but one of the PPAs (the latter three bids constituting the “Portfolio Bids”) (id. at 17). Of the nine non-Portfolio Bids, four were from counterparties to the PPAs (id. at 20).⁷ After analyzing each of the bids by comparing each of their NPVs to the NPV of the PPAs being bid upon, the Companies determined that, with respect to the existing MASSPOWER PPAs, MASSPOWER’s bid

⁷ The existing contract counterparties bid specifically on the contract to which they were a counterparty (Exh. NSTAR-RBH at 20).

was the most likely to create the greatest possible reduction in above-market costs based on the price offered and the viability of the bid (id. at 22).

The 2003 Auction was recently reviewed and approved by the Department in Pittsfield. There, the Department found that the 2003 Auction was “equitable and structured to maximize the value of the contracts sold.” Pittsfield at 22. In the Department’s recent approval of the 2003 Auction in Pittsfield, the Department noted a number of features that highlight the competitive nature of the auction:

- First, a large number of parties participated in the Companies’ auction; up to 90 parties were contacted initially, with 22 of those becoming Qualified Bidders, and 12 Qualifying Bidders eventually submitting bids (citation omitted).
- Next, Qualified Bidders were provided with contract and invoice data on a uniform basis, and a formal mechanism was established to permit each Qualified Bidder to obtain additional information (citation omitted).
- Each Qualified Bidder was assigned a CEA representative who served as that bidder’s single point of contact, allowing access to additional information while maintaining confidentiality (citation omitted).
- Qualified Bidders were free to submit bids on any combination of the Companies’ 24 entitlements, in order to maximize the value of the portfolio (citation omitted).

Pittsfield at 21.

Based on the evidence presented during the proceeding concerning the same auction previously approved by the Department in Pittsfield, the Companies have demonstrated (and the Department has already found) that “the auction process ensured complete, uninhibited, non-discriminatory access to all data and information by all interested bidders and that the auction process was competitive.” Pittsfield at 21-22.

Accordingly, the Department should find that the 2003 Auction was consistent with the Act, Boston Edison's Restructuring Settlement and Commonwealth's Restructuring Plan.

B. The Companies Have Demonstrated That, Even Under the Most Conservative Assumptions, the MASSPOWER Termination Agreement Will Produce Savings for Customers and Therefore Is Consistent with the Companies' Obligation to Mitigate Transition Costs to the Maximum Extent Possible.

The MASSPOWER Termination Agreement is consistent with the Companies' obligation under the Act to mitigate transition costs to the maximum extent possible. As noted previously, the MASSPOWER Termination Agreement extinguishes all obligations for Boston Edison and Commonwealth to purchase power under the existing MASSPOWER PPAs (Exh. NSTAR-GOL at 12). In return, the Companies are required to make a Termination Payment to MASSPOWER for assuming all of Boston Edison's and Commonwealth's rights and obligations under the contracts (*id.*). The MASSPOWER Termination Agreement minimizes the Companies' overall transition costs that they would otherwise collect from their customers by approximately \$108 million on an NPV basis (Exh. DTE-1-13(Supp), Att. DTE-1-13(b); Exh. DTE-1-13(Supp), Att. DTE-1-13(e); Tr. 1, at 142).

The Companies' and CEA's first step in the evaluation of the MASSPOWER Termination Agreement (and other bids for this or other PPAs) was to prepare a forecast of the above-market cost of the PPAs. Then, divestiture or buyout proposals were compared to NPV of the above-market value of the PPAs to determine whether and how much mitigation was represented by the proposal. As indicated by Mr. Hevert, this initial analysis, conducted by CEA, was used as a "screening tool" to compared and evaluate proposals (Exh. AG-3-4 [D.T.E. 04-60]; see also Tr. 1, at 89-90, 101 [D.T.E. 04-60])).

Generally, the above-market cost for the Existing MASSPOWER PPAs is calculated as the present value of the difference between the total costs to be paid for the energy and capacity over the term of the Existing MASSPOWER PPAs and the market value of that electricity (Exh. NSTAR-RBH at 18). The primary variables in the determining the above-market cost of the existing MASSPOWER PPAs were: (1) the market price of energy and capacity; (2) the projected energy production; and (3) fuel costs (Exh. NSTAR-RBH at 26). To ensure internal consistency, the fuel, energy, and capacity, price projections were obtained from the same source, a forecast developed by Henwood Associates (the “Henwood Forecast”) (*id.*, see also Exh. AG-1-31 **CONFIDENTIAL**). The Henwood Forecast provides an industry-known, independent, third-party forecast of the key energy variables needed in this analysis and have been relied on by NSTAR Electric and the Department in the past (Exh. DTE-2-9 [D.T.E. 04-60]). See Pittsfield at 26 (“The Henwood forecast is a widely-available and reasonable proxy for a forecast of the price of electricity.”). Moreover, the Henwood Forecast fell between other well-regarded market forecasts (Exh. AG-3-10, Attachment AG-3-10(b) **CONFIDENTIAL** [D.T.E. 04-60]). Finally, CEA applied a discount rate of 7.82 percent to compute the NPV of the above-market costs (Exh. NSTAR-RBH at 26; Exh. DTE-1-3 (Supp), Att. DTE-1-3 (Update) **CONFIDENTIAL**; Exh. AG-1-8 [D.T.E. 04-68]).

The second step in this screening process was the calculation of the costs under the proposed mitigation transaction, in this case, the MASSPOWER Termination Agreement. The savings are determined by comparing the forecast Transition Charges to be paid by customers if the Existing MASSPOWER PPAs were to remain in effect with the Transition Charges to be paid by customers under the MASSPOWER Termination

Agreement. Boston Edison's and Commonwealth's payments under the MASSPOWER Termination Agreement are stated fixed amounts, which were compared to the NPV of the above-market costs (Exh. NSTAR-RBH-5 **CONFIDENTIAL**). Summaries of the comparison, the annual savings and the NPV savings calculation are shown on Exhibit DTE-1-13(Supp), Attachment DTE-1-13(b) and Exhibit DTE-1-13(Supp), Attachment DTE-1-13(e). Those exhibits demonstrate that the MASSPOWER Termination Agreement provides approximately \$108 million in projected savings to customers over the existing MASSPOWER PPAs, on an NPV basis.⁸

Accordingly, the evidence on the record in this proceeding strongly supports the Companies' estimate of customer savings associated with the MASSPOWER Termination Agreement. Therefore, the MASSPOWER Termination Agreement provides for maximum mitigation of Boston Edison's and Commonwealth's transition costs and significant savings to their customers.

C. The Companies' Proposed Ratemaking Treatment for the Costs of the Purchase and Sale Agreement Is Consistent With Department Precedent.

The Companies' proposed ratemaking treatment for the costs of the MASSPOWER Termination Agreement is consistent with Department precedent and should be approved. The projected savings of approximately \$108 million associated

⁸ Savings from the MASSPOWER Termination Agreement are so substantial that fuel and energy prices would have to increase by approximately 76.4 percent in order for the proposed transaction to result in zero savings (including the savings resulting from the securitization of the lump-sum payment) (RR-DTE-3, Att. DTE-3(b) **CONFIDENTIAL**). Although short-term energy prices have experienced recent increases, longer-term increases of this magnitude on a sustained basis are highly unlikely, and would require major socioeconomic and geo-political extraordinary events to precipitate such a long-term change (Tr. 1, at 132-135 [D.T.E. 04-68]).

with the MASSPOWER Termination Agreement are determined by comparing the forecast Transition Charges to be paid by customers if the Existing MASSPOWER PPAs were to remain in effect with the Transition Charges to be paid by customers under the MASSPOWER Termination Agreement (Exh. NSTAR-GOL at 13, 17; compare Exh. DTE-1-13(Supp), Att. DTE-1-13(c) **CONFIDENTIAL** and Exh. DTE-1-13(Supp), Att. DTE-1-13(f) **CONFIDENTIAL** with Exh. DTE-1-13(Supp), Att. DTE-1-13(d) **CONFIDENTIAL** and Exh. DTE-1-13(Supp), Att. DTE-1-13(g) **CONFIDENTIAL**).⁹

The Companies propose that the significant customer savings resulting from the MASSPOWER Termination Agreement be returned to customers through the variable portion of each of the Companies' Transition Charge, consistent with the historical treatment of costs associated with the Existing MASSPOWER PPAs (Exh. NSTAR-GOL at 26-27). The payments made and Transition Charge revenues will continue to be reconciled to actual amounts as part of NSTAR Electric's annual reconciliation process in accordance with the Restructuring Settlement and Restructuring Plan (*id.* at 27). Accordingly, the Companies have demonstrated that its proposed ratemaking treatment for the costs of the MASSPOWER Termination Agreement is consistent with Department precedent and should be approved.

⁹ Exhibit DTE-1-13(Supp), Attachment DTE-1-13(d) **CONFIDENTIAL**, which is in the same format as Exhibit DTE-1-13(Supp), Attachment DTE-1-13(c) **CONFIDENTIAL**, computes Boston Edison's Transition Charges with the costs incurred under the MASSPOWER Termination Agreement instead of the existing MASSPOWER PPAs (pages 6 through 8). Similarly, Exhibit DTE-1-13(Supp), Attachment DTE-1-13(g) **CONFIDENTIAL**, which is in the same format as Exhibit DTE-1-13(Supp), Attachment DTE-1-13(f) **CONFIDENTIAL**, computes Commonwealth's Transition Charges with the costs incurred under the MASSPOWER Termination Agreement instead of the existing MASSPOWER PPAs. This exhibit also includes the effect on the mitigation incentive (Exh. DTE-1-13(Supp), Att. DTE-1-13(g), at 5 **CONFIDENTIAL**).

V. CONCLUSION

Based on the evidence presented during this case, and for all of the reasons set forth above, the Companies requests that the Department find that:

- (1) the 2003 Auction ensured complete, uninhibited non-discriminatory access to all data and information by all parties seeking to participate in the Auction and therefore was equitable;
- (2) the 2003 Auction maximized the value of the Companies' existing MASSPOWER PPAs for customers;
- (3) the MASSPOWER Termination Agreement is consistent with Boston Edison's Restructuring Settlement and Commonwealth's Restructuring Plan;
- (4) any and all authorizations that may be required under Massachusetts law for the MASSPOWER Termination Agreement, as described herein, have been satisfied, including, without limitation, approval pursuant to G.L. c. 164, §§ 1A, 1G and 76;
- (5) the MASSPOWER Termination Agreement is consistent with applicable law, including relevant portions of the Act and Boston Edison's approved Restructuring Settlement and Commonwealth's approved Restructuring Plan, is in the public interest, and will result in just and reasonable rates for Boston Edison's retail customers, in accordance with G.L. c. 164, §§ 94 and 94A; and
- (6) Boston Edison and Commonwealth, in entering into the MASSPOWER Terminations Agreement, have taken all reasonable steps to mitigate, to the maximum extent possible, the total amount of transition costs relating to the existing MASSPOWER purchase power contracts in accordance with G.L. c. 164, § 1G.

The Companies also respectfully request that the Department: (1) grant any other approvals and make any other findings that may be necessary or appropriate to facilitate the sale of the assets as described herein; and (2) make the requested findings on an expedited basis, consistent with the issuance of Department orders in related cases, D.T.E. 04-70 and D.T.E. 04-78.

Respectfully submitted,

**BOSTON EDISON COMPANY and
COMMONWEALTH ELECTRIC COMPANY**

By Their Attorneys,

A handwritten signature in black ink, appearing to read "Robert N. Werlin", written over a horizontal line.

Robert N. Werlin, Esq.

John K. Habib, Esq.

Stephen H. August, Esq.

Keegan, Werlin & Pabian, LLP

265 Franklin Street

Boston, Massachusetts 02110

(617) 951-1400 (telephone)

(617) 951-1354 (facsimile)

Date: October 29, 2004